FRIDAY, Feb. 21, 1840.

The Senate met pursuant to adjournment, and the proceedings of yesterday were read.

Mr. Berthelot, from the committee on Enrolled bills, reported as correctly enrolled, an act to repeal an act entitled an act, to prohibit the circulation of notes of foreign banks of less denomination than five dollars.

Mr. Mills, from the committee on the state of the Territory, reported an act, to incorporate a Company, to be called the St. Marks Railroad Company, with amendments.

Mr. Hawkins, from the Judiciary committee, reported unfavorably to a bill, to be entitled an act, for the relief of James T. Patterson, and for other purposes—said bill was ordered for to day.

Also an act, to alter and amend the act entitled an act, to prevent the migration of free negroes and mulattoes into this Territory, and for other purposes—on motion, written copies of said bill were ordered for Monday next.

The same from the same committee, reported favorably on the following bills.

An act to amend an act, concerning Wills, Letters Testamentary and of Administration, and the duties of Executors, Administrators and Guardians, approved Nov. 20, 1828.

An act, concerning partition of property.

And an act, approved Feb. 3, 1834, concerning the authentication of conveyances—said bills were ordered for to day.

Mr. Hawkins, from the select committee, to whom was referred certain resolutions of the New Jersey Legislature, made the following report.

The committee to whom was referred the preamble and resolutions transmitted by the Legislature of New Jersey, have had the same under consideration, and beg leave to report the following preamble and resolution for the adoption of the Senate, as a reply.

The importance of the subject, discussed in the New Jersey preamble and resolutions, to all the friends of Republican Government, well justifies an expression of opinion by the Senate, though foreign to its immediate duties; particularly as its attention has been specially called to the subject by the New Jersey authorities, and silence might be misconstrued into acquiescence in the opinions and views advanced in the papers transmitted It may be urged that Florida, being as yet in her minority, not possessing the rights and dignity of a State, and entirely dependent on the General Government, should not express opinions on the subjects in the accompanying Resolutions; but your committee are of opinion, that as her present state of dependence and vassalage is likely soon to pass away, propriety dictates that the present moment ought not to be deemed premature, for discussing subjects, in which we, as citizens of the United States, are directly interested and concerned, and upon which, public opinion cannot be too much enlightened.

The Legislature of New Jersey complains, that their State authorities and the broad seal of their State, have been treated with indignity

by the rejection of Messrs. Aycrigg, Maxwell, Halstead, Stratton and Yorke, as members of the 26th Congress.

This charge might come with some force, if the members of the House of Representatives were *State* officers, elected and *commissioned* by the State, and chosen to perform the business of the State in its sovereign capacity, and to the State as such responsible. If such was the case, if the House of Representatives was composed of deputies or ambassadors from the States in their sovereign capacities, then doubtless, each State would, unless otherwise expressly provided by the compact under which they assembled, prescribe conclusively the time, place and manner of election, the qualifications of electors and representatives, and the forms of commission or other proper evidence of election, and to reject persons coming armed with all the requisitions of the State law, would be an indignity and a violation of the compact.

But the constitution of the Federal Government, is mixed in its character, partly federal and partly national. In the House of Representatives, the *States* as sovereigns are not represented, but the *people* of the several States in their primary capacity. The people by the constitution elect the representatives, who are officers of the General Government, and not of the *States*. The *people* are their constituents, *not* the States. The qualifications of electors and of representatives are fixed by the constitution of the Union, and cannot be affected by State legislation, and Congress might even fix the time, place and manner of holding the elections, and such an act would be paramount to all State Legislation. It is true, that until Congress does pass such an act, the States have power to regulate the time, place and manner of electing representatives. But this power over mere forms, given for convenience, and liable at any moment to be taken away, cannot alter the nature of the office, or shift the responsibilities of the officers elected.

We differ with the Legislature of New Jersey in its conclusion, that this right to prescribe the time, place and manner of holding elections, necessarily includes the power to prescribe the manner in which the "result of these elections shall be ascertained and certified," and still more from the inference, that such certificate shall be *conclusive* as to the right to *take* a seat. For we hold every doctrine to be politically absurd, which gives a right to take, what is at the same time clear, the party taking cannot hold, and which gives the power and possession to the defeated party, and leaves the successful candidate to petition and claim, or which gives to *mere form*, what it denies to *substance*, and allows a *certificate* to prevail over an *election*.

Such a doctrine would annihilate that clause of the constitution, which makes each House the conclusive judge of the election returns and qualifications of members, and would convert our mixed government into one wholly federal. It would open the door to boundless frauds, and careless or corrupt State officers, might always defeat the people of their own States; and the officers of a few States might, by a fraudulent combination, control a majority of the whole House of Representatives, and thus taint and corrupt the whole legislation of the Union; for we cannot doubt, that men who would have the unblushing effrontery, to claim and take seats under a false, fraudulent, or forged certificate, would have the hardihood to retain them afterwards by the combined power of themselves and their associates in guilt.

But admitting with the Legislature of New Jersey, that the States have the right to prescribe the mode of return, and that such return shall be conclusive as to the right to take a seat, when the law prescribing it is followed; it cannot be contended, that a return shall be conclusive, when the law prescribing the mode is not followed in any essential particular; and unless this is the case, no indignity can have

been committed by rejecting the returned members. The Legislature of New Jersey seems to have lost sight of the fact, that their Governor failed to comply with their own law, which they claim to have respected, and that in thus failing, he appended his signature, and the Seal of the State, to an instrument to which he had no right to place them, and consequently was a nullity, which Congress, from respect to the State and its people, was bound to disregard.

If the commission was of any force and effect, it derived that force and effect solely from the law of New Jersey, which authorized it to be given. The House of Representatives had a right to enquire by what law it was authorized before they respected it as an official act, and of course they had a right to enquire whether the requisitions of the law had been complied with, so as to give the act the respect due to an official act; and if not, they were bound to treat the act done in violation of law, or without law, as a mere nullity, precisely as if no act had been passed upon the subject.

The act of New Jersey requires the county Clerks to transmit to the Governor lists of *all* the candidates voted for in their respective counties, and *all* the votes given for each, within seven days after the election. And if not sent within that time, that the Governor shall send an express for them, at the expense of the State. And the Governor shall, *after* receiving all of said lists, within five days, call his council, and after *casting up the whole number of votes from the several counties*, shall determine the six persons who have the greatest number of votes, and those he shall commission.

The whole duty of the Governor, in this behalf, is ministerial. His power is to decide *nothing* judicially, but under certain circumstances, to certify, from the records before him, what others have decided. If he had done this as the law required, his signature, and the seal of the State, could have been treated with no indignity, and no question would have arisen. The Governor did not send an express for the votes which did not reach him within the seven days after the election, and did not not *count* them when received, because not received in time. These facts are admitted and notorious.

New Jersey cannot complain of Congress, because her own Governor violated her own law, and gave a void commission, when he might have given a valid one. It is clear, the New Jersey law never authorized the Governor to give a commission, until the reception of *all* the returns, and if they were not sent, it was his duty to send for them until they were obtained. And if he never could have obtained them, the contingency upon which he was to have granted a commission never would have arisen, and the members must have gone before Congress, upon such of the original returns as they could obtain, as they have in fact done now, when a void commission was given.

If a valid commission could be given in the absence of any single return, so could it be given in the absence of all, and the power of election in fact, be transferred from the people to the Governor.

But it is contended, that the commission is conclusive as to the right to take a seat in the face of facts showing it to be fraudulent and void, as inconsistent with facts, and given contrary to law. Then must it be conclusive to the same extent, under all circumstances, and to all intents and purposes.

Suppose five convicts, from the New Jersey Penitentiary, had bribed the Governor to give them the commission and broad seal, they must have been privileged from arrest, and taken their seats in the House of Representatives, and have voted for Speaker, although they might have been ousted afterwards. This follows immediately and necessarily from the principle sought to be established, and we, as re-

publicans, prefer adhering to the old fashioned doctrine, that the candidates receiving the greatest number of legal votes, is the person elected, and entitled to his seat from first to last, to this new light, that broad seals make members of Congress, which tends to such dangerous results.

We conclude then, that in this case, the commission given without compliance with the essential requisites of the law authorising it, was as absolute a nullity, as it it had been a forgery.

But if the Governor had followed all the forms of law, and waited for the returns and counted all the votes, his commission would not still have been conclusive, as to the right to take the seats: First, because the New Jersey law does not *pretend* to make it so. Secondly, because it would have been void, if it had attempted it by coming in collision with the Constitution of the United States, which gives each house the right of judging of the elections, returns and qualifications of its own members.

To shew the absurdity of making it conclusive, even as to the right to take the seats, and if all forms had been complied with, it is only necessary to suppose a mistake in the enumeration, the casting up of votes, the mere ministerial act which the Governor is required to perform and certify—should that give the seat to the man who was not elected?

But it is said triumphantly, that the Governors commission should be conclusive as to the right to take the seat in the first instance, even in favor of a man not elected, because only the House is qualified to judge, and until organization there is no House, and consequently there is no tribunal in existence capable of examining any counter testimony.

Whatever wire drawn metaphysical or technical reasons may be found in favor of this argument, it bears the broad seal of political absurdity and moral wrong upon its face. No doctrine or reasoning can be correct, which gives power to the rejected candidates, and withholds it from the chosen officers, when these facts are apparent.

The idea is, that there is no competent tribunal provided by the Constitution, to protect the people of the States from fraudulent returns, or void commissions, by the capacity of examining into facts, whenever and where ever presented.

That although the authority by which every officer exercises his powers, from the President down to a Constable, can be enquired into before a single official act is recognized as such, that with regard to this office alone, that of representing the people in their original sovereignty, and protecting their nearest and dearest rights, and prescribing the rules of action for all other officers, no such right of inquiry exists.

The framers of our boasted Constitution must have been bunglers indeed, thus to have left the most striking feature in the Constitution, the most sacred privilege of the people—the most important function of Government—the highest attribute of Sovereignty—the very vital principle of free government itself, which was the moving cause of our glorious revolution, entirely at the mercy, caprice or cupidity of such petty officers as deputy sheriffs in Virginia and Kentucky (and perhaps other States) who actually *farm* their offices, or the corrupt favoritism of more important functionaries in some of the States, who prostitute their powers to party purposes.

The very doctrine itself holds, that there is always a house capable of looking at one certificate, and requires that it shall always only be capable of looking at the false one! For when the certificate is *true*, no question can arise on the returns.

The Constitution makes the same house equally the judges of *all the returns*. The certificate of a Secretary of State,—the returns of the

county court clerks, or the township commissioners, and the original poll books; and if there exists a house capable of seeing a broad seal appended against law to a false certificate, surely it is a competent house to look at the true returns. It would be futile to give the power of *judging of returns*, if *only one return* could be looked at, and nothing in conflict with it, can be examined. And it is absurd to say, you can only judge of the return after organization, and permitting the man with false return to take his seat, because that Congress could never meet or be organized, if any one man choose to question the return of every member as he was called. There being no tribunal to decide, the House could never be organized.

The doctrine would go to the extent of requiring that a man who was not even a candidate, who brought the broad seal commission, should take his seat in preference to another, who brought the original poll book, giving him all the votes of the people. This is inconsistent, not only with the Constitution and New Jersey law, but the dictate of common sense. The case of one who was a candidate, and expressly refused by the people, is not stronger than that of one who was no candidate.

The very statement of the question requires that the persons *not* elected shall take the seats for the purpose of determining the rights of those who are elected, and with the privilege in effect, of voting in their own cases. It requires that the House of Representatives shall be organized by persons who are not members of Congress, and the resolutions under consideration contend that there is no legal House of Representatives, because persons not members of Congress, were refused the privilege of partaking in the organization of the House. At the very time, when the evidence of their not being members was before the House, in as conclusive a form as it ever could be placed and was indeed admitted to be true.

For these reasons, and others which might be urged, we are of opinion, that the persons named were justly excluded from the House of Representatives, not only because they never had been elected members, but expressly rejected by the people of New Jersey, to whom they offered themselves.

We are also of opinion, that no indignity was offered, or meant to be offered to the State authorities or seal of New Jersey, by the rejection of these persons, but the conscientious discharge of an imperative duty.

And that the only indignity offered to the seal was by placing it to a false and illegal certificate.

And we are also of opinion, that the precedent sought to be established by the persons in question, and the doctrine contended for in the New Jersey preamble and resolutions, are in violation of the Federal Constitution, corrupt in their tendency, subversive of the fundamental principles of Republican Government, and fraught with danger to the most sacred rights and liberties of the people.

Be it therefore Resolved, That the Governor be requested to transmit this preamble and resolution to the authorities of New Jersey, as the opinion of the Senate of Florida, in reply to their preamble and resolutions.

GEORGE S. HAWKINS, Chairman.
WM. P. DU VAL.

On the question of concurring in the report, the yeas and nays were called by Messrs. English and Duval, and were:

Yeas—Mr. President, Messrs. Bailey, Berthelot, Duval, Dupont, Hart and Hawkins, 7.

Nays—Messrs. English, Mills and Walker, 3.

So said report was concurred.

On the question to print 500 copies of said report, the yeas and nays were called by the same, and were:

Yeas—Mr. President, Messrs. Bailey, Berthelot, Duval, Dupont, Hart and Hawkins, 7.

Nays—Messrs. English, Mills and Walker, 3.

So said report was ordered printed.

On the question to postpone indefinitely the report, the yeas and nays were called by Messrs. English and Duval, and were:

Yeas—Messrs. English, Mills and Walker, 3.

Nays—Mr. President, Messrs. Bailey, Berthelot, Duval, Dupont, Hart and Hawkins, 7.

Said report was made the special order of Wednesday next.

A bill, to be entitled an act, to provide for the compensation of the officers of the Legislative Council, and for other purposes, was laid on the table.

An act to repeal an act entitled an act, for the relief of the militia called into the service of the United States during the present Indian war, was read a third time and passed—ordered that the title be as above.

An act, for the relief of James T. Patterson, and for other purposes, was read a third time, the rule being waived, and lost.

An act in amendment to an act, approved Feb. 3, 1834, concerning the authentication of conveyances, was read a third time and passed without amendment—ordered that the title be as above.

The Senate went into committee of the whole, Mr. Hart in the chair, on a bill, entitled an act, concerning the partition of property; after some time spent in its consideration, the committee rose and reported progress, and the bill was referred to committee on the Judiciary.

An act to amend an act, concerning Wills, Letters Testamentary and of Administration, and the duties of Executors, Administrators and Guardians, approved Nov. 20, 1828, was read, and copies ordered for Monday next.

The Senate received from the House as passed, an act to repeal an act entitled an act, concerning tax collectors, and for other purposes, approved March 4, 1839, which was read a first and second time by its title, and referred to the committee on Finance.

Also an act, to extend the right of Samuel C. Keyser, to a Ferry across Escambia river, which was read a first and second time by its title, and referred to the committee on the state of the Territory.

Also an act, to alter the time of holding the county court of Franklin county, which was read a first and second time, rule waived, and referred to the Judiciary committee.

Also an act, for the relief of William *H.* Jones, which was read a first and second time, the rule being waived, and referred to the Judiciary committee.

The House sent to the Senate, a resolution before passed by the Senate, to increase the salary of the Governor, with all but the enacting clause stricken out.

Also an act to repeal an act, granting appeals and writs of error in criminal cases, with all but the enacting clause stricken out.

Also, a resolution before passed by the Senate, relative to the appointment of a joint committee of both Houses, to enquire into the expediency of dividing the Territory, as indefinitely postponed by the House.

Also, an act to amend the several acts, concerning Notaries Public, was indefinitely postponed by the House.

The Senate went into secret session on Executive business, on motion, the doors were opened.

The Senate then adjourned until Monday.

MONDAY, February 24, 1840.

The Senate met pursuant to adjournment.

On motion, Mr. Duval was called to the chair.

The following letter was received:

Tallahassee, Feb. 23, 1840.

To the Honorable the Senators of Florida.

GENTLEMEN:

Being compelled, from the situation of my affairs, to leave for home, I announce to you the resignation of my seat in the Senate of Florida.

I can assure you that nothing but the most urgent necessity could have induced me to separate myself from you.

With many of you I have been for previous sessions associated in the responsible trust of legislating for the people; and although occasional differences may have arisen in our views, it affords me pleasure to recur to the general good feeling that has always prevailed between us.

I assure you, gentlemen, that I shall ever retain a grateful sense of the honor twice conferred on me by my election to preside over your deliberations, as well as of your kind forbearance and support extended towards me in discharging the duties thereof:

I trust that on your return to your constituents, your services will be properly appreciated, and that you may continue to enjoy their confidence. With my earnest wishes for your health and prosperity,

I am, gentlemen, with great respect,

Your most obedient servant,

JOHN WARREN.